

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

Claimant began working in May 2007 as a drywall finisher for respondent. His job consisted of mudding, taping and finishing drywall. On July 11, 2007, he had climbed the side of a scaffold and had put his right foot on the platform. He then lifted his left leg up over the rail and while turning twisted his right knee. Claimant immediately felt a dull pain in his right knee and it continued to worsen as he worked. Respondent laid claimant off work on July 16, 2007. Claimant did not immediately report the injury to his employer because he thought the pain was going to be minor and go away as well as the fear of losing his job. Claimant testified:

Q. Why didn't you report that to anyone?

A. I thought the pain was going to be minor and that it would go away, and the fact that I was making over \$27 an hour and it was the only big job going on in Kansas City and there were people lined up waiting for it, and I wasn't getting along with the foreman anyway because of an accident that had happened with another crew member that was partnered up with me. I was fearful of losing my job and I didn't want to rock the boat.¹

After claimant was laid off he tried to call Ron Fridley, respondent's field superintendent, to report his injury and left messages for him to return his call but no response was received. At the request of the ALJ, the claimant submitted a copy of his phone billing which corroborated his testimony that he had made the calls.

Because the claimant did not provide notice until after he was laid off the respondent argues the accident did not occur. This Board member disagrees. The claimant provided uncontradicted testimony regarding how the accidental injury occurred and a plausible explanation why he did not immediately report the incident. He further testified that he tried to contact the field superintendent to report his accident immediately after he was laid off and was no longer fearful of termination. Claimant's phone records confirmed the calls were made. The claimant has met his burden of proof to establish that he suffered accidental injury arising out of and in the course of his employment.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.² Moreover, this review of a preliminary hearing Order has been determined by only one Board Member,

¹ P.H. Trans. at 17-18.

² K.S.A. 44-534a.

as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.³

WHEREFORE, it is the finding of this Board Member that the Order of Administrative Law Judge Bryce D. Benedict dated October 9, 2007, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of December 2007.

DAVID A. SHUFELT
BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Donald J. Fritschie, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge

³ K.S.A. 2006 Supp. 44-555c(k).